Remarks

Favorable consideration and allowance of the instant application is respectfully requested in view of the foregoing amendments to the claims, and the remarks which follow.

Claims 11-30 are currently pending in this application.

The Examiner's rejections, as they pertain to the patentability of the claims, are respectfully traversed.

Claims 11-30 are rejected under 35 U.S.C. § 102(b) as being anticipated by Marsh et al. (US 4,076,800). This rejection is respectfully traversed for the following reasons.

Initially, Applicant would like to note that it is very well settled that a factual determination of anticipation requires the disclosure, in a single reference, of each and every element of the claimed invention, and an Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See, *In re Levy*, 17 USPQ2d 1561 (Bd. Pat. App. & Inter. 1990). Applicant respectfully submits that US '800 reference fails to anticipate the claimed invention on the grounds that it fails to disclose each and every element thereof.

More particularly, the US '800 reference fails to disclose the use of the claimed proteins which are condensation products of hydrolysates with fatty acids. As a result, this reference cannot serve to anticipate the present invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 11-14, 18-24 and 28-30 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sayers et al. (US 3,594,324). This rejection is respectfully traversed for the following reasons.

Applicant respectfully submits that the '324 reference fails to anticipate the claimed invention for the same reason discussed above with respect to the '800 reference. More particularly, the '324 reference fails to disclose the use of the claimed proteins which are condensation products of hydrolysates with fatty acids. As a result, this reference cannot

serve to anticipate the present invention.. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 15-17 and 25-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sayers as applied to the above claims. This rejection is respectfully traversed for the following reasons.

Initially, Applicant would like to note that in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure [underline emphases added]. See, *Manual of Patent Examining Procedure*, Rev. 3, July 1997, section 2142, pages 2100-2108.

Applicant respectfully submits that the '324 reference fails to render the present invention obvious on the grounds that it fails to teach, suggest or motivate all of the claim limitations. Applicant respectfully submits that the '324 reference fails to teach, suggest or motivate the use of proteins which are condensation products of hydrolysates and fatty acids. As a result, for this reason alone this reference should not be held to render the claimed invention prima facie obvious.

With respect to the limitations contained in claims 15-17 and 25-27, the Examiner contends that the claimed amounts would be obvious to the routineer by way of mere optimization. Applicant, however, respectfully disagrees with the Examiner's assumption. It is well settled that where the prior art gives either no indication as to which parameters are critical or no direction as to which of many possible choices is likely to be successful, prima facie obviousness may not be based on an improper "obvious-to-try" rationale. See,

In re O'Farrell, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988). Applicant submits that the Examiner has concluded that the amounts of protein and phosphates disclosed in claims 15-17 and 25-27 based upon an improper "obvious-to-try" rationale for there exists no disclosure within the '324 reference which might motivate the routineer to want to optimize the amounts of proteins and phosphates disclosed in the reference in a manner which would read on the claimed invention. Consequently, this reference should not be relied upon to render the claims prima facie obvious.

Accordingly, for the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

It is believed that the foregoing reply is completely responsive under 37 CFR 1.111 and that all grounds for rejection are completely avoided and/or overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,

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